SUBJECT INDEX

	Page
Table of Cases and Other Citations	ii-iv
Interest of this Amicus Curiae	1-2
Summary of Argument	3-4
Argument	4-22
I. The California Procedures are Contrary to the Express Provisions of the Social Security Act and to the General Purposes of the California Unemployment Insurance Code and of the Federal Unemployment Insurance Program	4-17
A. The Employer Has An Opportunity to Be Heard Before a Determination of Claimant's Eligibility is Made	5
B. The Social Security Act Requires Payment of Benefits When Due	5-8
C. Section 1335 is Contrary To The General Purposes of the Federal Unemployment Insurance Program and of the California Unemployment Insurance Code	9-17
II. Section 1335 of the California Unemployment Insurance Code Deprives Workers of Property Without Due Process of Law by Suspending Benefits Without a Prior Hearing	17-21
III. The District Court Was Not Obligated to Draw Guidelines to "Save" Section 1335 of the California Code as Suggested by Appellants	22
Conclusion	22
Appendix A: Unemployment Insurance Code of California, Sections 101, 1326, 1327, 1328 and 1335	23-25

INDEX TO AUTHORITIES

Table of Cases

Page

Administrator & Tomasula v. Republic Steel Corp. & Board of Review, Ohio Ct. App. 7th Dist., Mahoning County, No. 4268, 7 CCH Un. Ins. Reps. Para 8303 (1963) 12,14

Crow v. California Dept of Human Resources, — F. Supp. — (N.D. Calif. No. C-70 1126 ACW, 1970) 7

Daniel v. Goliday, — U.S. —, 26 LE 2d 57 (1960).. 18

Fox v. Employment Sec. Commis., 379 Mich. 579 (1967) 20

Goldberg v. Kelley, 397 U.S. 254 (1970).....3, 17, 18

Grasse v. Dealer's Transport Co., 412 Ill. 179, 196 N.E. 2d 124 (1952), *cert.* den. 344 U.S. 837 (1952) 21

Independent Gasoline Co. v. Bureau of Un. Comp., 190 Ga. 613, 10 S. E. 2d 58 (1940), *cert.* den. 311 U.S. 707 (1940) 21

Minski v. United States, 131 F. 2d 614 (6th Cir. 1942), *cert.* den., 319 U.S. 775 (1943)..... 20

Nash v. Florida Industrial Commis., 389 U.S. 235 (1967) 3, 7, 8, 13, 18, 19

Porter v. Shibe, 158 F. 2d 68 (10th Cir. 1946)..... 19,20

Quaker City Cab Co. v. Pennsylvania, 277 U.S. 389 (1928) 20, 21

	Page
Roxborough v. Unemployment Comp. Commis., 309 Mich 505 (1944)	6
Sayers v. Gardner, 380 F. 2d 940 (6th Cir. 1967)	19
Smith v. District Un. Comp. Bd., et al, — F. 2d —, Fed. CCH Un. Ins. Reps. No. 4666-21, Par. 21,266 (D.C. Cir. No. 23,448, 1970)	6, 7
Charles C. Steward Machine Co. v. Davis, 301 U.S. 548 (1937)	11
Strauder v. West Virginia, 100 U.S. 303, 25 Sup. Ct. 664 (1880)	20
United States v. American Trucking Ass'n, 310 U.S. 534 (1940)	15, 17
United States v. Silk, 331 U.S. 704 (1947)	19
Washington Nat'l. Ins. Co. v. Board of Rev. of N.J. Un. Comp. Comm., 1 N.J. 545, 64 A.2d 443 (1949)	21
Wheeler v. Montgomery, 397 U.S. —, 25 LE 2d 307 (1970)	18

Constitution, Statutes and Miscellaneous

	Page
American College Dictionary (1951 ed.)	15
Black's Law Dictionary (4th ed. 1951)	15
California Unemployment Insurance Code:	
Section 100	9, 10
Section 101	5
Section 1326	11
Section 1327	5
Section 1328	5
Section 1335	3-5, 9, 11, 17, 19, 21, 22
Constitution of the United States, Fourteenth Amendment, Section 1	17, 18, 20
Hart and Sacks, The Legal Process (Cambridge Tentative Edition, 1957)	15, 16
Michigan Employment Security Act, Section 2 (Mich. Comp. Laws, Sec. 421.2)	11
Social Security Act, Title 42, U.S.C.A. Section 503(a)(1)	3, 6, 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 507

CALIFORNIA DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT, et al.,
Appellants,

vs.

JUDITH JAVA, et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF OF THE INTERNATIONAL UNION, UAW AS AMICUS CURIAE IN SUPPORT OF APPELLEES

INTEREST OF THIS AMICUS CURIAE

The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America—UAW,[1] pursuant to Rule 42(2) of the Rules of this Court, obtained consent from appellants and from appellees to the Union's filing of an *Amicus Curiae* Brief in Support

[1] The *Amicus Curiae*, International Union, UAW, will hereinafter usually be referred to as "UAW" or as the "Union".

of Appellees' position on the merits. This Consent is being filed with the Clerk of this Court along with this Brief.

The UAW has an interest in this case, both as an employer, which pays taxes into unemployment insurance funds, and as a representative of employees covered by unemployment insurance laws and by the Social Security Act.

The UAW is an employer or employing unit in thirty-four States. These include California and the following States: Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia and Wisconsin. In addition, the Union is an employer in the District of Columbia and Puerto Rico. Finally, Local Unions, which are affiliated with the UAW, are separate employers in most of said States.[2]

The Union is also a labor organization within the meaning the the National Labor Relations Act, as amended. As such, the UAW represents approximately 1,412,000 members in the United States, including about 54,000 members in California. Furthermore, the Union is the representative of numerous other employees who are not members of it. Agents of the Union frequently are authorized by its individual members and by others to present their claims for unemployment insurance to administrative agencies.

---

[2] There are twenty-three UAW Local Unions in California, many of which are also "employers".

SUMMARY OF ARGUMENT

Section 1335 of the California Unemployment Insurance Code is contrary to the Social Security Act in that it is not "reasonably calculated to insure full payment of unemployment compensation when due" (Title 42 U.S.C.A. Sec. 503(a)(1)).

When "due" refers to the time when payments must be made to unemployed workers in order to fulfill the purposes of the Federal unemployment insurance program—that is when these persons are out of work and in greatest need of the money.

Because of the delays in the payment of unemployment insurance, which are inherent in the California procedure and in the procedures of some other states, unemployed workers do not receive full payment of their compensation until months and even years after they became unemployed. These delays are contrary to the general purposes of the California Unemployment Insurance Code and of Federal program, which Code and program were intended as emergency relief from temporary loss of employment and remuneration.

By suspending the payment of compensation to claimants, after an initial administrative determination of eligibility, appellants deprive appellees and other unemployed workers of property without due process of law.

This Court recognized the financial need of claimants for unemployment insurance in *Nash v. Florida Industrial Commis.*, 389 U.S. 235 (1967). The principles of *Goldberg v. Kelly*, 397 U.S. 254 (1970), *a fortiori* apply to claimants for unemployment insurance; this Court said that they did in *Goldberg*.

Appellants argument that the District Court should have avoided holding Section 1335 of the California Statute unconstitutional is not forceful or relevant. The Court held that Section 1335 was contrary to the purposes of the California Statute (A. 138, 139)[3] and was contrary to Federal Statutes and policy as well as to the United States Constitution. (A. 139). The Court stayed enforcement of a portion of said Section 1335. The District Court had no obligation to, as appellants now suggest,[4] draw a "guideline" for a proper administration of the Statute.

I.

THE CALIFORNIA PROCEDURES ARE CONTRARY TO THE EXPRESS PROVISIONS OF THE SOCIAL SECURITY ACT AND TO THE GENERAL PURPOSES OF THE CALIFORNIA UNEMPLOYMENT INSURANCE CODE AND OF THE FEDERAL UNEMPLOYMENT INSURANCE PROGRAM.

The Union is in accord with and expressly adopts by reference appellees' pleadings and briefs to the District Court (A. 4-39 and A. 77-92), appellees' Interrogatories (A. 93-101) and the stipulation of the parties (A. 114-132). The Union will avoid repeating the matters in appellees' pleadings and briefs but will supplement said documents.

---

[3] Pages of the Appendix will be cited in parenthesis, preceded by "A".

[4] Except for the general prayer that the District "Court grant such other relief as is proper in the premises" (A. 42), the Appendix does not reveal that appellants asked the District Court to draw any such guidelines.

A. The Employer Has An Opportunity to Be Heard Before a Determination of Claimant's Eligibility is Made.

Initially it should be noted that appellants mislead this Court as to the California procedures. Appellants imply that the administrative determination of a claimant's eligibility for compensation is made before the employer has had any opportunity to be heard (at pp. 11-14 of appellants' Brief). This is not true.

Prior to a determination of eligibility and the subsequent appeal under Section 1335 (with which this Court is concerned), the employer has an opportunity to present his evidence and views to the administrative agency. Section 1327 of the California Statute requires that the employer be notified of a claim and given 10 days to submit facts. The employer is not precluded from submitting such facts in person if desired. (See also Appendix, pp. 128-132).

Section 1328 stresses that "The facts submitted by an employer pursuant to Section 1327 shall be considered and a determination made as to the claimant's eligibility for benefits."

B. The Social Security Act Requires Payment of Benefits When Due.

The unemployment insurance program in California and other states was enacted pursuant to a Federal program set forth by Federal legislation. See, for example, Section 101 of the California Act which emphasizes that its program is part of said national plan.

Compare *Roxborough v. Unemployment Compensation Commission*, 309 Mich. 505, 511 (1944), where the Michigan Supreme Court said:

> ". . . it is clear the legislature intended that the governor's authority under section 35, to fix the salaries of members of the appeal board which were 'to be paid from the administration fund' created by section 10, *should be subject to the Federal social security board's regulation* of the expenditure of said administration fund, as provided in section 11. Therefore, *the governor's authority* to fix plaintiff's salary *was subject to such* regulation." (Emphasis supplied.)

The purpose of the National unemployment insurance program is to promptly pay benefits to unemployed workers. Accordingly it is even more important that this basic purpose not violate Federal regulations than secondary purposes, such as the payment of proper salaries to board members.

The procedure of appellant, California Department of Human Resources Development, is subject to Federal Social Security Regulations under Title 42, U.S.C.A. Section 503(a).

The importance of these regulations was stressed in *Smith v. District Un. Comp. Bd., et al.*, — F. 2d —, CCH Un. Ins. Reps. No. 466-21, Par. 21, 266 (D.C. Cir. No. 23, 448, Aug. 28, 1970):

> *"We need not turn to constitutional requirements.* We are after all dealing with a subject, *unemployment compensation, in which* the opportunity for hearing was considered by Congress to be so fundamental that *it was expressly mandated on the State agencies that they provide 'opportunity for a fair hearing,* before an impartial tribunal' for all indi-

viduals whose claims are denied. See 42 U.S.C. §503(a)(3)." (Emphasis supplied.)

See also *Crow, et al v. California Dept. of Human Resources, et al.*, — F. Supp. — (N.D. Calif. No. C-70 1126 ACW, Oct 12, 1970), where the Court, relying upon the District Court's decision in the instant case, said in part:

> "Unemlpoyment insurance, like public assistance, is administered by the individual States within a federal statutory framework. Both programs involve grants made to the States which have established programs of aid to unemployed and/or needy persons, which programs have been certified by relevant officials as meeting the standards set by federal statutes and regulations." (S.S. p. 4)

As appellees point out, the California Statute violates the Social Security Act because it is not "reasonably calculated to insure full payment of unemployment compensation when due" [Title 42, U.S.C.A., Sec. 503(a)(1)].

As discussed in more detail, *infra*, an unemployed worker is left with *no* funds and with the prospect of interminable litigation at the time the Social Security Act intended him and his family to be protected. The terrible effects of the combination of a suspension of unemployment benefits and the expenses of litigation were noted by this Court in *Nash v. Florida Industrial Commis.*, 389 U.S. 235 (1967). Mr. Justice Black, speaking for a unanimous Court, said in part:

> "Florida has applied its Unemployment Compensation Law so that an employee who believes he has been wrongly discharged has two choices: (1) he may keep quiet and receive unemployment compensation until he finds a new job or (2) he may file an unfair labor practice charge, thus under Florida procedure *surrendering his right to unemployment*

compensation, and risk financial ruin if the litigation is protracted. Even the hope of a future award of back pay *may mean little to man of modest means and heavy responsibilities faced with the immediate severance of sustaining funds.*"
(at 239; emphasis supplied)

The Court, in *Nash*, concluded in part:

"It appeals obvious to us that *this financial burden which Florida imposes will impede resort to the Act* and thwart congressional reliance on individual action. A national system for the implementation of this country's labor policies is not so dependent on state law. *Florida should not be permitted to defeat or handicap a valid national objective* by threatening to withdraw state benefits from persons simply because they cooperate with the Government's constitutional plan. . . ."

"In *M'Culloch v. Maryland*, 4 Wheat 316, 436, 4 L ed 579, 609, decided in 1819, this Court declared *the States devoid of power 'to retard, impede, burden, or in any manner* control, *the operations of the constitutional laws enacted by Congress* to carry into execution the powers vested in the general government. . . .'" (at 239 and 240; emphasis supplied)

Similarly, the delay in paying compensation to eligible unemployed workers when they most need funds retards, impedes and burdens the operation of the Federally enacted State unemployment insurance program.

C. Section 1335 is Contarry To The General Purposes of the Federal Unemployment Insurance Program and of the California Unemployment Insurance Code.

The practice of appellant Department results in eligible unemployed workers being deprived of compensation when or shortly after they become unemployed and results in their families not having statutory funds at the time the workers and their families are most in need. This practice is directly contrary to the purposes of the Federal unemployment insurance program and of the California Statute itself.

Such practice cannot be justified by the contention that it preserves the Fund or that it protects the employers' ratings. The Department, as appellees indicate, has the power to later recover these payments from the employee. A similar argument was rejected in *Nash, supra,* where this Court noted:

> "*Respondents suggest that petitioner might enjoy a windfall if she was paid compensation* and was subsequently awarded back pay by the Labor Board. *This argument is unresponsive to the issue in dispute, however, since a State is free to recoup compensation payments made* during any period covered by a back-pay award. (Citations)". (Emphasis ours; at 239 of 389 U.S.)

The purpose of the California Act is stated in its Section 100 as follows:

> "As a guide to the interpretation and application of this division the public policy of this State is declared as follows:
>
> Experience has shown that a large number of the population of California do not enjoy permanent

employment by reason of which *their purchasing power is unstable.* This is *detrimental to the interests of the people* of California *as a whole.*

The benefit to all persons resulting from public and private enterprise is realized in the final consumption of goods and services. It is contrary to public policy to permit the supply of consumption goods and services at prices which do not provide against that harm to the population consequent upon periods of unemployment of those who contribute to the production and distribution of such goods and services.

Experience has shown that *private charity and local relief cannot alone prevent the effects of unemployment.* Experience has shown that if the State awaits the coming of excessive unemployment it can neither create immediately the organization necessary to orderly, economical and effective relief nor bear the financial burden of relief without disrupting its whole system of ordinary revenues and without jeopardizing its credit.

The Legislature therefore declares that in its considered judgment the public good and the general welfare of the citizens of the State require the enactment of this measure under the police power of the State, for the compulsory setting aside of funds to be used for a system of *unemployment insurance providing benefits for persons unemployed through no fault of their own, and to reduce* involuntary *unemployment and the suffering caused thereby to a minimum.*

It is the intent of the Legislature that unemployed persons claiming unemployment insurance benefits shall be required to make all reasonable effort to secure employment on their own behalf." (Emphasis supplied.)

The importance of prompt payment of compensation is emphasized in Section 1326 of the California Act and in Section 1400.1 of the regulations under said Act. (A. 116)

Compare Section 2 of the Michigan Employment Security Act (Mich. Comp. Laws, Sec. 421.1, *et seq*) which provides:

> "The legislature acting in the exercise of the policy power of the state declares that the public policy of the state is as follows:
>
> *Economic insecurity due to unemployment is a subject of general* interest and *concern which requires action by the legislature to* prevent its spread and *to lighten its burden which* so often *falls* with crushing force *upon the unemployed worker and his family,* to the detriment of the welfare of the people of this state. *Social security requires protection against this hazard* of our economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of *funds* during periods of employment *to provide benefits for periods of unemployment* by the setting aside of unemployment deserves *to be used for the benefit of persons unemployed* through no fault of their own, *thus maintaining purchasing power and limiting the serious social consequences of relief assistance,* is for the public good, and the general welfare of the people of this state." (Emphasis ours.)

Justice Benjamin Cardozo said, in *Charles C. Steward Machine Co. v. Davis,* 301 U.S. 548, 593 (1937):

> "An unemployed law framed in such a way that the unemployed who look to it will be deprived of reasonable protection is one in name and nothing more."

Section 1335 of the California Act delays unemployment compensation to workers found eligible by the first admin-

istrative body. Such delays can be for months while employers and their counsel and the unemployed workers and what counsel they can afford litigate and relitigate their claims. Such practice deprives the unemployed workers of reasonable protection when they need it.

In *Administrator and Tomasula v. Republic Steel Corp. and Board of Review,* Ohio Ct. of App. 7th Dist., Mahoning County (No. 4268, 7 CCH Un. Ins. Reps. Para. 8303 (1963), Judge France, in concurring recognized that these delays defeat the purposes of the comparable Ohio Statute:

> "Already nearly three and one-half years have gone by from application time. Assuming probable motion to certify record to the Supreme Court in either this or the recent Stark County Court of Appeals decision, four years will have passed before the claimants will know whether or not they can get *money* which *was intended solely as emergency relief from temporary loss of employment.* This performance adds very litte lustre to either the administrative or judicial process. *So much time has passed that the original goal has been lost sight of* and the final result has lost all significance except as a matter for United Steel Workers and Republic Steel Corporation bargaining at some future conference table . I am convinced that *both administrative and judicial procedure should be such that the result, be it favorable or unfavorable, should be reached at a time when the individual worker can least relate it to his original economic loss." (Dictum;* at p. 38, 522; emphasis ours.)

It is significant that the instant case was brought by a legal aid society. Unemployed claimants without their compensation cannot feed their families let alone pay their lawyers. This fact that unemployed workers, with com-

penstaion suspended, have greater difficulty in affording prolonged litigation will discourage their reliance upon the Statute and, thus, further defeat the purposes of the California Act and of the Social Security Act. Compare *Nash v. Florida Industrial Commis.*, 389 U.S. 235, 239, 240, quoted, *supra*, at page 7.

The Brief of Southern California Edison Company, and others, as *Amicus Curiae*. argues that an unemployment compensation claimant "is much more likely to be able to get by for the short period of time required to resolve the issue of his eligibility . . ." But the purpose of the unemployment compensation program is to get funds to the unemployed worker at the time of his unemployment; this is precisely when the Edison Company suggest that he may "get by". Congress evidently believed that these unemployed workers could not "get by" at that time.

The State of Idaho makes a similar argument based on assertions (not in the record) that the average income of Idaho claimants was about $6,600.00. But these claimants, when they become unemployed, immediately go from this income to nothing. These unemployed claimants are unlikely to qualify for welfare payments when they first become unemployed. These unemployed claimants and their families may even be worse off than welfare recipients who presumably have become accustomed to surviving on very little. This situation cannot be answered by saying that the unemployed worker can always go on welfare. The unemployment insurance program was enacted to prevent that very thing.

The State of New York as *Amicus Curiae* admits that the "unemployment insurance programs throughout the country . . . contemplates a scheme of insurance to help workers over the hump of temporary unemployment." (at p. 2 of its Brief).

Paying compensation to an unemployed worker, after an initial determination of eligibility, accomplishes such purpose, even if the money is later recovered from him. Not paying compensation to such worker until months or years later defeats such purpose.

The State of Ohio expresses interest in a system where "the greatest number of unemployed persons can begin to receive benefits *immediately* upon request with (sic) the delay and expense occasioned by the necessity of a true adversary hearing". (at pp. 13, 14 of its *Amicus Curiae* Brief; emphasis ours) The instant case, of course, does not concern the procedure of paying compensation when there is no employer challenge. We are here concerned with the challenged cases. And these cases, as Ohio apparently admits, do result in "delay and expense." For an Ohio Judge's view of how absurdly its Unemployment Compensation Act works in contested cases,[5] see *Administrator and Tomasula v. Republic Steel Corp., et al.*, quoted *supra* at page 12. Ohio cites "three essential purposes which underlie the Federal Act." (at p. 15 of its Brief). All three purposes support appellee's position in the instant case.

The word "due" in Title 42, U.S.C.A. Section 503(a)(1), when construed according to said purposes of the unemployment insurance program, means the time when payments must be made to unemployed workers in order to stabilize their consumer demand, to provide compensation during their short time of unemployment and to prevent them from having to resort to welfare.

---

[5] The Ohio Statute's procedure is presently being challenged in the U.S. District Court for the Northern District of Ohio, Western Division No. C70-302 in *Foard v. Ohio Bureau of Unemployment Services.*

The definitions of "due" support such meaning. "Due" means when the payment is "Just; proper; regular; lawful . . . reasonable;" (Blacks Law Dictionary, 4th Ed. 1951, at p. 589) and "rightful . . . fitting . . . attributable, as to a cause . . ." (American College Dictionary, 1951 ed., at p. 372). The problem which must be met is the loss of a job and the *immediate* loss of remuneration. This problem can *only* be met by paying compensation when due—that is when the money is needed.

The words of the law, even if "clear and unambiguous" (as few words really are) are useful as guides or perhaps persuasive indications of the legislative purpose. In *United States v. American Trucking Ass'n*, 310 U.S. 534 (1940), this Court said as follows:

> "There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. *When that meaning has led to absurd or futile results*, however, *this Court has looked beyond the words to the purpose of the Act.* Frequently, however, *even when the plain meaning did not produce absurd results but merely* an unreasonable *one 'plainly at variance with the policy of thee legislation as a whole' this Court has followed that purpose, rather than the literal words.* . . ." (At 543 and 544, emphasis supplied.)

One of the best analyses of how statutes should be interpreted and construed and applied, which we have found, is in *The Legal Process* by Professors Henry Hart and Albert Sacks. Professors Hart and Sacks discuss statutory construction at pages 1070 through 1343 of their 1957

Cambridge Tentative Edition. This discussion has been repeated in present still unpublished volumes of this work. The following conclusions are stated on page 1083:

> "The meaning of a statute is never plain unless it fits with some intelligible purpose. *Any judicial opinion * * * which finds a plain meaning in a statute without consideration of its purpose, condemns itself on its face.* The opinion is linguistically, philosophically, legally, and generally ignorant. It is deserving of nothing but contempt. * * *
>
> *"The first task in the interpretation of any statute* (or for any provision of a statute) *is to determine what purpose ought to be attributed to it.* The principal problem in the development of a workable technique of interpretation is the formulation of accepted and acceptable criteria for the attribution of purpose.
>
> "Deciding what purpose ought to be attributed to a statute is often difficult. But at least three things about it are always easy. (a) The statute ought always to be presumed to be the work of reasonable men pursuing reasonable purposes reasonably, unless the contrary is made unmistakably to appear. (b) *The* general *words of a statute ought never to be read as directing an irrational pattern of particular applications.* (c) *What constitutes an irrational pattern of particular applications ought always to be judged in the light of the overriding and organizing purpose."* (Emphasis the authors' and ours.)

The authors added:

> *"A formally enacted statement of purpose in a statute should be accepted by the court* if it appears to have been designed to serve as a guide to interpretation, is consistent with the words and context of the statute, and is relevant to the question of meaning at issue." (At 1339, emphasis supplied.)

The meaning of "due" suggested by appellants and the application of Section 1335 of the California Code lead to "absurd and futile results . . . [which are] plainly at variance with the policy of the legislation as a whole . . ." (*American Trucking Ass'n, supra.*) Almost all of those who support appellants agree that the purpose of the Federal unemployment compensation program and the programs of their particular States is to provide emergency relief from temporary loss of income due to unemployment. The District Court agreed in the instant case. Yet appellants ask this Court to hold that they may defeat said purposes by keeping compensation from out of work claimants who have been determined eligible through a fair administrative procedure.

Such a futile result, at variance with the purposes of such laws, is not necessary to protect the interests of the States or of employers. This Court should not be a party to such a result.

II.

SECTION 1335 OF THE CALIFORNIA UNEMPLOYMENT INSURANCE CODE DEPRIVES WORKERS OF PROPERTY WITHOUT DUE PROCESS OF LAW BY SUSPENDING BENEFITS WITHOUT A PRIOR HEARING.

By suspending the payment of compensation to claimants, after an initial administrative determination of eligibility, appellants deprive appellees and other unemployed workers of property without due process of law.

Since at least *Goldberg v. Kelley*, 397 U.S. 254, 25 L Ed 2d 287 (1970), it has been clear that entitlement to welfare payments and to unemployment compensation are property rights protected by the due process clause and not mere privileges, which States can take away or impede at will. In *Goldberg v. Kelley*, Justice Brennan said:

> ". . . *The constitutional challenge cannot be answered by an argument that public assistance benefits are 'a "privilege" and not a "right."' Shapiro v. Thompson*, 394 US 618, 627, n 6, (1969). *Relevant constitutional restraints apply as much to the withdrawal of public assitance benefits as to disqualification for unemployment compensation, Sherbert v. Verner*, 374 US 398, (1963); or to denial of a tax exemption, *Speiser v. Randall*, 357 US 513, (1958); or to discharge from public employment, (Citation)." (at 296 of 25 LE 2d, emphasis supplied)

See also *Wheeler v. Montgomery*, 397 U.S. 280, 25 L. Ed. 307, (1970); and *Daniel v. Goliday*, — U.S. — 26 L. Ed 2d 57 (1970).

The above language in *Goldberg v. Kelly*, indicates that its holding *a fortiori* applies to claimants for unemployment compensation.

Appellants' argument that *Goldberg's* principles should not be applied to unemployment compensation claimants is based upon appellants' erroneous premise that the unemployment insurance program is not related to need. The purposes of the California Code and of the Michigan Act quoted *supra* at pages 8 and 9, indicate that unemployment insurance laws are mainly designed to maintain purchasing power for unemployed persons and their families because of their immediate loss of income and to keep such persons off the welfare rolls. These purposes *are* related to need and to welfare statutes.

This Court recognized the financial need of claimants for unemployment insurance in *Nash v. Florida Industrial Commis.*, 389 U.S. 235 (1967). In *Goldberg*, this Court relied in part upon *Nash*.

Appellants contend (at pp. 15, 16 of their Brief) that the employers will be harmed because compensation paid

claimants is essentially unrecoverable. This Court rejected a similar argument in *Nash, supra,* at 238 of 389 U.S.

Furthermore, the employer cannot be hurt because, if it ultimately prevails, there is no charge against the experience rating account upon which the employers unemployment insurance contributions are based. (Section 1335(b) of the Calif. Code).

The beneficial purposes of the Social Security Act are similar to the aforequoted purposes of the California Code and of the Michigan Act. In this regard, see *Sayers v. Gardner,* 380 F. 2d 940 (6th Cir. 1967), where the Court by Judge McAllister, said:

> "*The Act was adopted* pursuant to a public policy unknown to the common law, *designed for the protection of society, and enacted to alleviate the burdens* which rest on large numbers of the population because of the insecurities of modern life, *particularly those accompanying* old age, *unemployment,* and disability, *through the establishment* in advane *of a* provident *fund for the needy worker, out of which he will be paid* disability *benefits,* annuities, *and compensation;* and there is no question that the Social Security Act is constitutional." (at 942; emphasis supplied)

See also *United States v. Silk,* 331 U.S. 704, 712, 721 (1947).

The purpose of legislation governs its interpretation. It is also an essential factor in determining the validity of legislation. See, for example. *Porter v. Shibe,* 158 F. 2d 68, 73 (10th Cir. 1946), where the Court said:

> "*The due process guaranty of the Fifth Amendment demands* only *that the law* shall not be unreasonable, arbitrary or capricious, and that the means

selected *shall have a real and substantial relation to the object sought to be attained.*" (Emphasis supplied.)

See also *Minski v. United States,* 131 F. 2d 614 (6th Cir. 1942), *certiorari* denied, 319 U.S. 775 (1943).

Compare *Strauder v. West Virginia,* 100 U.S. 303, 25 Sup. Ct. 664, 666 (1880), where this Court stressed the breadth of the 14th Amendment protections.

Compare *Fox v. Employment Sec. Commis.,* 379 Mich. 579 (1967), where the Michigan Supreme Court held unconstitutional Section of the Michigan Employment Security Act which provided that such benefits must be offset or reduced by Workmen's Compensation received by the employee. The Court said, in part:

> "*In determining what is* within legislative discretion and what is *arbitrary,* regard must be had for the particular subject of the State legislation. *There must be a relation between the classification and the purposes of the act in which it is found.*" (At 588; emphasis supplied.)

See also Justice Brandeis' dissent in *Quaker City Cab Co. v. Pennsylvania,* 277 U.S. 389 (1928), where he said:

> ". . . *the classification must insist upon a difference which is real,* as distinguished from one which is seeming, specious, or fanciful, so that all actually situated similarly will be treated alike; that *the object of the classification must be the accomplishment of a purpose or the promotion of a policy,* which is within the permissible functions of the State; and that *the difference must bear a relation to the object of the legislation which is substantial,* as distinguished from one which is speculative, remote or negligible. . . ." (At 406, emphasis supplied.)

The majority held that the classifications in the Statute were not "based on a real and substantial difference having reasonable relation to the subject of the legislation." (At 402).

See also *Independent Gasoline Co. v. Bureau of Unemployment Compensation,* 190 Ga. 613, 10 S.E. 2d 58, 60 (1940) *certiorari* denied, 311 U.S. 707 (1940); *Grasse v. Dealer's Transport Co.,* 412 Ill. 179, 196 N.E. 2d 124, 132, 133 (1952), *certiorari* denied, 344 U.S. 837 (1952); and *Washington Natinonal Ins. Co. v. Board of Review of N. J. Unemployment Comp. Comm.,* 1 N.J. 545, 64 A. 2d 443, 446, 447 (1949).

The above authorities support appellees' position that Section 1335 of the California Code deprive them and other workers of property without due process of law because it is arbitrary and unreasonable in light of the purposes of unemployment compensation laws.

Section 1335 of the California Code inherently results in delays in the payment of unemployment insurance to claimants who do not receive full payment of their compensation until months after they become unemployed. Section 1335 is, thus, contrary to the express purposes of the California Unemployment Insurance Code itself as well as to the purposes of the Federal unemployment insurance program.

III.

THE DISTRICT COURT WAS NOT OBLIGATED TO DRAW GUIDELINES TO "SAVE" SECTION 1335 OF THE CALIFORNIA CODE AS SUGGESTED BY APPELLANTS.

Appellants argued that the District Court should have avoided holding Section 1335 of the California Statute unconstitutional and instead drawn guidelines to meet Federal policy. The Court held that Section 1335 was contrary to the purposes of the California Code and to Federal Statutes and policy as well as to the United States Constitution (A. 138, 139).

The District Court had no obligation to, as appellants now for the first time suggest, draw a "guideline" for a proper administration of the Statute. The California Legislature, presumably with the assistance of appellants and their counsel, the California Attorney General, can amend Section 1335 to "save" it or can draw such guidelines.

CONCLUSION

Based upon appellees' pleadings and Briefs and for the reasons stated herein, this Honorable Court should affirm the decision of the District Court.

Dated: January 13, 1971.

Respectfully submitted,

STEPHEN I. SCHLOSSBERG
JOHN A. FILLION
JORDAN ROSSEN
8000 East Jefferson Avenue
Detroit, Michigan 48214
Telephone: (313) 926-5216
Attorneys for Amicus Curiae,
International Union, UAW

APPENDIX A

Unemployment Insurance Code of California

Sec. 101. This part is a part of a national plan of unemployment reserves and social security, and is enacted for the purpose of assisting in the stabilization of employment conditions. The imposition of the tax herein imposed upon California industry alone, without a corresponding tax being imposed upon all industry in the United States, would, by the corresponding penalty upon California industry defeat the very purposes of this law as set forth in this article. Therefore when existing federal legislation which provides for a tax upon the payment of wages by employers in this State, against which all or any part of the employer contributions required under this part may be credited is repealed, amended, interpreted, affected or otherwise changed in such manner that no portion of such contribution may be thus credited, then upon the date of such change, the provisions of this part requiring employer contributions and providing for payment of unemployment compensation benefits shall cease to be operative and any assets in the Unemployment Fund or Unemployment Administration Fund shall in the discretion of the State Treasurer be held in the then existing depositaries or otherwise in the State Treasury. In the case of the Unemployment Administration Fund, such money may thereafter be dealt with by the State Treasurer pursuant to the conditions of the grant thereof to the State by the United States Government or agency thereof.

Sec. 1326. Claims for unemployment compensation benefits shall be made in accordance with authorized regulations. Except as otherwise provided in this article, bene-

fits shall be promptly paid if the claimant is found eligible or promptly denied if the claimant is found ineligible.

Sec. 1327. A notice of the filing of a new or additional claim shall be given to the employing unit by which the claimant was last employed immediately preceding the filing of such claim, and the employing unit so notified shall submit within 10 days after the mailing of such notice any facts then known which may affect the claimant's eligibility for benefits.

Sec. 1328. The facts submitted by an employer pursuant to Section 1327 shall be considered and a determination made as to the claimant's eligibility for benefits. The claimant and any employer who prior to the determination has submitted any facts or given any notice pursuant to Section 1327 and authorized regulations shall be promptly notified of the determination and the reasons therefor and may appeal therefrom to a referee within 10 days from mailing or personal service of notice of the determination. The 10-day period may be extended for good cause. The director shall be an interested party to all appeals.

Sec. 1335. If an appeal is filed, benefits with respect to the period prior to the final decision on the appeal shall be paid only after such decision, except that:

(a) If benefits for any week are payable in accordance with a determination by the department irrespective of any decision on the issues set forth in the appeal, such benefits shall be promptly paid regardless of such appeal, or

(b) If a referee affirms a determination allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, and regardless of any

action taken under Section 1336 or otherwise by the director, Appeals Board, or other administrative body or by any court.

If such determination is finally reversed, no employer's account shall be charged with benefits paid because of that determination.